IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 13TH JUNE 2007 / 23RD JYAISHTA 1929

WP(C).No. 15220 of 2005(J)

MC.271/2003 of FAMILY COURT, THIRUVALLA

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PETITIONER:

BIJU.R., PLAVILA THEKKETHIL,
ELAMANNUR MURIYIL, ENADIMANGALAM VILLAGE,
PATHANAMTHITTA.

BY ADV. SRI.S.MUHAMMED HANEEFF

RESPONDENT:

SREEJA.V., AGED 25 YEARS,
SREENILAYAM, PAZHAKULAM THEKKUM MURIYIL,
VANCHIKKAL VILLAGE, ADOOR TALUK,
PATHANAMTHITTA.

BY ADV. SRI.P.SREEKUMAR
SRI.K.S.MANU (PUNUKKONNOOR)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1 - TRUE COPY OF PETITION DT.11/6.03 IN MC.271/03 FILED BY RESPONDENT BEFORE FAMILY COURT, THIRUVALLA.

EXT.P2 – TRUE COPY OF PETITION DT.5.6.03 IN OP.925/03 FILED BY RESPONDENT BEFORE DO.

EXT.P3 – TRUE COPY OF PETITION IN OP.945/03 FILED BY PETR. BEFORE DO.

EXT.P4 – TRUE COPY OF PETITION UNDER SEC.13b AS OP.153/05 DT.7.3.05 BEFORE DO.

EXT.P5 – TRUE COPY OF RECEIPT ISSUED BY RESPONDENT TO PETR. DT.3.3.05.

EXT.P6 – TRUE COPY OF JURY NOTE PREPARED BY ADALATH OF FAMILY COURT DT.17.2.05 IN OP.925/03

EXT.P7 – TRUE COPY OF CRL.M.P.169/05 IN MC.271/03 FILED BY PETR. BEFORE FAMILY COURT, THIRUVALLA.

EXT.P8 – TRUE COPY OF ORDER DT.22.4.05 IN DO. DO.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.15220 OF 2005

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DATED THIS THE 13TH JUNE, 2007

J U D G M E N T

The parties are husband and wife and since they fell apart, there were several proceedings before the Family Court. M.C.No.271 of 2003 was filed against the petitioner by the respondent-wife. O.P.925 of 2003 was filed by her seeking return of the ornaments allegedly retained by the petitioner-husband and O.P.945 of 2003 (Ext.P3) for divorce was filed by the husband. The cases were referred to the Lok Adalat and as will be seen from Ext.P6 minutes of the mediators, it was agreed between the parties inter alia that a sum of Rs.2,25,000/- will be paid by the petitioner to the respondent and thereupon the respondent-wife will withdraw from the cases filed by her and will agree for filing a petition for divorce by mutual consent. The petitioner relies on Ext.P5 receipt to show that the amount agreed as per the compromise has been paid by him to the respondent. Noticing that there is diffidence on the part of the respondent to withdraw from the maintenance case, the petitioner filed Crl.M.P.No.169 of 2005. The learned Judge of the Family Court has passed Ext.P8 order dismissing

the Crl.M.P., taking the view that the petitioner has no locus standi to file such a petition.

2. Sri.K.S.Manu, counsel for the respondent submits that it is not correct to say that the petitioner has discharged all his obligations under the compromise. What has been paid is only Rs.2,25,000/- which was value of the gold ornaments which were agreed to be returned. The cash commitment has not been settled by the petitioner, counsel submits.

3. I do not propose to settle the above dispute. But I am at a loss to understand how the Judge of the Family Court can say that the petitioner who is the respondent in the M.C. is not having locus standi to file an application. The order Ext.P8 does not at advert to the contentions of the parties. Ext.P8 is liable to be set aside on that reason. I set aside Ext.P8 and direct the Presiding Officer of the Family Court, Thiruvalla to take a fresh decision on Crl.M.P.169 of 2005 (Ext.P7), after hearing both sides, in accordance with law. Till such time as a fresh decision is taken on Ext.P7, the learned Judge will not dispose of Ext.P1 (M.C.271 of 2003). Since I am told that the petitioner is a soldier who is working elsewhere, the learned Judge of the Family Court will permit him to appear through counsel till a fresh

decision is taken as directed above on the Crl.M.P.

4. The Writ Petition is allowed to the extent indicated above. No costs.

(PIUS C.KURIAKOSE, JUDGE)

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